

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BARRY CLARK COLBY,)
)
Plaintiff,)
)
v.)
)
DAVID L. WINN, et al.)
)
Defendants.)
_____)

Civil Action No. 05CV40124NG

DEFENDANT'S MOTION TO DISMISS

The defendant, David Winn, Warden, Federal Medical Center at Devens, Massachusetts, hereby moves to dismiss Petitioner Colby's habeas corpus petition for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), or, in the alternative, for judgment as a matter of law pursuant to Fed. R. Civ. P. 56.

Respectfully submitted,

DEFENDANT DAVID WINN,
WARDEN, FMC DEVENS,

By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Gina Y. Walcott-Torres
Gina Y. Walcott-Torres
Assistant United States Attorney
John Joseph Moakley U.S. Courthouse
One Courthouse Way, Suite 9200
Boston, Mass. 02110
617-748-3369

REQUEST FOR WAIVER OF LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned counsel hereby requests a waiver of the requirements of Local Rule 7.1(A)(2). As reasons therefore, she asserts that the plaintiff, who is acting *pro se*, is incarcerated at the Federal Medical Center in Devens, Massachusetts.

/s/ Gina Y. Walcott-Torres

Gina Y. Walcott-Torres

Assistant United States Attorney